

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Universal Service Reform)	WT Docket No. 10-208
)	
Mobility Fund)	

REPLY COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

Windstream Communications, Inc., on behalf of itself and its affiliates (collectively “Windstream”), submits the following reply comments in response to the Federal Communications Commission (“Commission”) request for comment on the creation of a Mobility Fund using reserves accumulated in the Universal Service Fund.¹

Windstream urges the Commission to reject wireless commenters’ calls for the agency to provide even more funding to wireless-specific broadband deployment projects. Rather than focus its resources on the technology-specific and narrowly focused Mobility Fund, the Commission should make implementation of an efficient, technology-neutral mechanism—the Connect America Fund (“CAF”)—its highest priority for universal service reform. The Mobility Fund should serve a focused, limited complement to this larger mechanism, with disbursements occurring only after the CAF is implemented. Such an approach would ensure the most efficient, fiscally responsible distribution of limited funding, and most effectively promote the deployment of broadband and telecommunications services in high-cost areas.²

¹ *Universal Service Reform Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking (rel. Oct. 14, 2010) (*NPRM*).

² Comments of Windstream Communications, Inc., WT Docket No. 10-208, at 2-4 (December 16, 2010) (Windstream Comments).

Furthermore, if “open Internet” requirements are applied to some broadband providers,³ the Commission should apply the full scope of these requirements to *all* entities receiving universal service funding for the provision of broadband as a supported service—be they wired or wireless, fixed or mobile. In this context, where limited funding is being directed by government toward fulfilling Congressionally identified public benefits, Windstream observes that it would be wholly inappropriate for the Commission to permit funding recipients to run afoul of network openness standards that the Commission already has deemed necessary and proper for fixed broadband providers. Application of open Internet requirements on mobile providers would facilitate, for all consumers, access to comparable networks—an explicit goal of the Universal Service Fund. Moreover, a wireless carrier’s decision to bid for public support and assume any attendant obligations would be wholly voluntary.

I. INITIAL COMMENTS DEMONSTRATE THAT THE COMMISSION SHOULD IMPLEMENT THE CAF BEFORE AWARDING ANY SUPPORT THROUGH THE MOBILITY FUND.

Though the Commission proposed that the Mobility Fund provide “targeted, one-time support” for the narrow purpose of filling the gaps in 3G mobile wireless service,⁴ numerous parties are advocating for the kind of “mission creep” and ballooning costs about which Windstream expressed concern in its initial comments. For example, CTIA—The Wireless

³ Windstream continues to oppose the imposition of open Internet regulations. *See* Comments of Windstream Communications, Inc., GN Docket No. 09-191, WC Docket No. 07-52 (October 12, 2010) (Windstream Open Internet Comments) (noting that the imposition of the proposed rules to any broadband services would be unnecessary and not in the public interest). Windstream, however, recognizes that the Commission recently adopted rules in its recent Report and Order in the Preserving the Open Internet proceeding. *Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order (rel. December 23, 2010) (*Open Internet Order*).

⁴ *NPRM* at ¶ 5.

Association® requests that the Commission “consider whether Mobility Fund deployments should automatically qualify for on-going support under the Connect America Fund.”⁵ Cellular One urges that “participation in the Broadband Mobility Fund should create a presumption of eligibility for Connect America Funding.”⁶ Several parties opined that the Mobility Fund is not large enough,⁷ and some advocated for the creation of a separate, permanent fund to support the deployment and maintenance of mobile broadband networks.⁸

Such comments are contrary to the Commission’s express intent to focus on technology-agnostic approaches to reducing the broadband availability gap⁹ and, accordingly, should be flatly rejected. Consistent with goals articulated in the National Broadband Plan,¹⁰ the Commission should focus first on the implementation of a broad, technology-neutral mechanism, such as the CAF, to ensure the deployment of networks that will provide reliable baseline

⁵ Comments of CTIA—The Wireless Association®, WT Docket No. 10-208, at 14 (December 16, 2010).

⁶ Comments of MTPCS, LLC d/b/a Cellular One, WT Docket No. 10-208, at 13 (December 16, 2010).

⁷ Comments of T-Mobile USA, Inc., WT Docket No. 10-208, at 4-6 (December 16, 2010); Comments of New EA d/b/a Flow Mobile, WT Docket No. 10-208, at 6 (December 15, 2010); Comments of General Communication, Inc., WT Docket No. 10-208, at 2-3 (December 16, 2010); Comments of the Rural Cellular Association, WT Docket No. 10-208, at 9-11 (December 16, 2010); Comments of the Rural Telecommunications Group, Inc., WT Docket No. 10-208, at 2-3 (December 16, 2010).

⁸ Comments of United States Cellular Corporation, WT Docket No. 10-208, at 27-29 (December 16, 2010); Comments of AT&T Services, Inc., WT Docket No. 10-208, at 3 (December 16, 2010).

⁹ Federal Communications Commission, Connecting America: The National Broadband Plan at 145 (rel. March 16, 2010) (National Broadband Plan).

¹⁰ *Id.* at 135.

broadband and telecommunications services in high-cost areas.¹¹ The Commission should employ the CAF to identify and support the lowest-cost provider—of any technology—that can fulfill its specifications in a given area, and use the Mobility Fund to fill in any remaining areas that lack 3G mobile broadband service.

The National Broadband Plan makes clear that the Commission’s top deployment priority should be to ensure that all American households have access to high-quality voice service and broadband service capable of supporting e-mail, the downloading of web pages, photos and video, and simple video conferencing.¹² Going forward, the National Broadband Plan envisions that the main engine for public investment toward this availability goal will be the CAF.¹³ According to the Plan, the CAF eventually will become the repository of all high-cost universal service funding, and will distribute billions of dollars to support the deployment and maintenance of broadband and voice networks in high-cost areas.¹⁴ The projects supported by the CAF,

¹¹ See Comments of CenturyLink, WT Docket No. 10-208, at 1 (December 16, 2010) (stating that the “Commission must remain laser-focused on creating a successful Connect America Fund, which is far more important”); Comments of Free Press, WT Docket No. 10-208, at 4 (December 16, 2010) (opining that “There are many broadband gaps identified in the National Broadband Plan that are more deserving of attention [than the mobility gap], and we encourage the Commission to do so. Bringing broadband into the homes of rural and low-income Americans that lack service is a far wiser endeavor”).

¹² National Broadband Plan at 135. See also *Connect America Fund, A National Broadband Plan for our Future, High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, Notice of Inquiry and Notice of Proposed Rulemaking, Statement of Chairman Julius Genachowski (rel. April 21, 2010) (stating that Commission is “committed to” “ensur[ing] that every American, no matter where they live or what they earn, has access to affordable, high-quality broadband communications service,” and that this deployment project is a “deeply important effort”).

¹³ National Broadband Plan at 145.

¹⁴ *Id.*

especially enhancements to second-mile networks, ultimately will enable scalable wireline and wireless projects, and thus will advance the goal of improved access to robust mobile services as well. The scope and purpose of the CAF justify that it should be placed ahead of the Mobility Fund on the Commission's agenda.

In addition, because the CAF is intended to be technology-neutral, any broadband provider that can meet or exceed the specifications set by the Commission should be eligible to receive CAF support.¹⁵ These providers potentially could include providers of 4G mobile wireless service, which has been touted to offer average speeds in excess of the Commission's 4 Mbps download/1 Mbps upload universalization target.¹⁶ If a provider wishes to deploy 4G mobile wireless service that can meet the 4/1 specification in a high-cost area that lacks access to 4/1 broadband of any kind, it would be most efficient for that provider to seek CAF funding and, if it is deemed the lowest-cost provider and receives that funding, assume the attendant provider-of-last-resort obligations for the entire high-cost area. That area then would not require support from the Mobility Fund. Thus, implementation of the CAF first would ensure the most efficient

¹⁵ *Id.*

¹⁶ See Description of Verizon Wireless LTE Network, *available at* <https://www.lte.vzw.com/AboutLTE/VerizonWirelessLTENetwork/tabid/6003/Default.aspx> (stating that LTE will be supporting average data rates per user of 5-12 Mbps in the forward link, and 2-5 Mbps in the reverse link); Sprint 4G Coverage, *available at* http://shop.sprint.com/en/stores/popups/4G_coverage_popup.shtml (stating that Sprint 4G has average download speeds of 3-6 Mbps); AT&T Answer Center, *available at* http://www.wireless.att.com/answer-center/main.jsp?t=solutionTab&ft=&ps=solutionPanels&locale=&_dyncharset=UTF-8&solutionId=KB115947 (stating that AT&T's current speeds are "up to approximately 6 Mbps," and "LTE is expected to deliver even faster speeds").

disbursement of a very limited pool of funding, and fulfill the Commission's desire to take a "fiscally responsible" and "efficient approach" to closing the mobility gap.¹⁷

II. ALL RECIPIENTS OF UNIVERSAL SERVICE FUNDING FOR BROADBAND DEPLOYMENT SHOULD BE SUBJECT TO UNIFORM NETWORK OPENNESS STANDARDS.

Windstream continues to assert that the imposition of "open Internet" rules to any broadband services is unnecessary and not in the public interest. Nevertheless, in the wake of the Commission's Report and Order in the *Preserving the Open Internet* proceeding, Windstream urges the Commission to establish that *all* entities receiving universal service funding for the provision of broadband as a supported service—be they wired or wireless, fixed or mobile—will be subject to uniform standards for network openness.¹⁸ Specifically the Commission should condition receipt of Mobility Fund support on a broadband provider's compliance with the new rules, set forth in Part 8 of Title 47 of the Code of Federal Regulations, that are applicable to "fixed broadband Internet access service" providers.¹⁹

Congress created the Universal Service Fund so that "[q]uality services should be available at just, reasonable, and affordable rates," "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation," and that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to services . . . that are reasonably comparable to those services

¹⁷ National Broadband Plan at 146; *NPRM* at 2.

¹⁸ See Windstream Open Internet Comments at 6-19; Reply Comments of Windstream Communications, Inc., GN Docket No. 10-127 (August 12, 2010).

¹⁹ Windstream strongly opposes the imposition of any *additional* network management standards, beyond those set forth in Part 8 of Title 47, on any recipients of Universal Service high-cost funding.

provided in urban areas and . . . at rates that are reasonably comparable”²⁰ In this context, where limited funding is being directed by government toward fulfilling Congressionally identified public benefits, it would be wholly inappropriate for the Commission to permit funding recipients to run afoul of network openness standards that the Commission has deemed necessary and proper for fixed broadband providers. In addition, given the desire to limit the size of the Fund, awarding money to providers that are unwilling to comply with uniform network openness standards undoubtedly would deprive other providers, who are willing to comply with uniform standards, of funding to deploy open networks.

The Commission’s decision to refrain from imposing the full scope of the open Internet rules on mobile wireless providers in the industry-wide proceeding should not deter further agency action in this context. The application of uniform network openness standards with respect to the Mobility Fund is appropriate because it will facilitate, for all consumers, access to comparable networks—an explicit goal of the Universal Service Fund.²¹ Furthermore, a wireless carrier’s decision to bid for public support and to assume any attendant obligations is wholly voluntary. In this way, this situation is analogous to the auction for upper 700 MHz C Block spectrum, in which the Commission imposed openness conditions on winners of C Block spectrum.²² And as was the case for companies bidding for 700 MHz spectrum, some wireless

²⁰ 47 U.S.C. § 254(b)(1)-(3).

²¹ *See id.*

²² *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, Second Report and Order, ¶ 206 (2007).

providers that deploy mobile services have affirmatively stated that they would be willing to assume the application of openness rules to their mobile broadband service.²³

CONCLUSION

The Commission should implement an efficient, technology-neutral mechanism—the Connect America Fund (“CAF”)—before awarding support through the Mobility Fund. Such an approach, with the Mobility Fund serving as a narrow, focused complement to the CAF, would ensure the most efficient, fiscally responsible distribution of limited funding and best promote the deployment of baseline broadband and telecommunications services in high-cost areas. Furthermore, to protect the interests of consumers, the Commission should make clear that *all* entities receiving universal service funding for the provision of broadband as a supported service—be they wired or wireless, fixed or mobile—will be subject to uniform standards for network openness.

Respectfully submitted,

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²³ *Open Internet Order* at ¶ 93, fn.286 (citing comments of Clearwire and Sprint).